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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourteenth session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 May 1996, at 10 a.m.

Chairperson: Mr. ALSTON

later: Mr. GRISSA

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The meeting was called to order at 10.25 a.m.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. Mr. AYALA LASSO (High Commissioner for Human Rights) said that the Committee's contribution to the Expert Group Meeting on the right to adequate housing, in which the Committee Chairperson, Mr. Alston, had played an active part, had been of crucial importance for reaffirming the right to adequate housing as a human right. Mr. Alston would certainly provide the Committee with more information on the results of that meeting.

2. In accordance with General Assembly resolution 48/141, he was mandated to promote and protect the realization of all human rights, including the right to development. Within the restructuring process currently under way at the Centre for Human Rights, the right to development would be given prominence. In its resolution 1996/15 on the right to development, the Commission on Human Rights had invited the relevant treaty bodies to consider examining, within the scope of their mandate, the proper means for their contribution to the implementation of that right. He accordingly invited the Committee to continue its discussion on the subject with a view to further elaborating on its earlier suggestions and to make concrete recommendations to the Commission.

3. Regarding the restructuring of the programme of work and the organization of the Centre for Human Rights, the process had led to the elaboration of a Change Plan which contained projects for reorganization and refocusing in five areas: managing finances; managing human resources; managing information; managing relations with other partners; and restructuring the Centre. The implementation of those five projects was under way. On the recommendation of the General Assembly, one of the new units set up in the Centre was responsible, among other things, for the right to development.

4. Referring to the Organization's financial crisis, he said that the series of cuts had brought the Centre's annual budget down to about $22 million a year, and that would inevitably mean a major decrease in the number of posts and consequently other expenses; that would greatly complicate his task, as well as that of the Committee. He would continue to make every effort to ensure the promotion and protection of human rights, in close collaboration with the Committee.

5. The CHAIRPERSON reiterated the request by Committee members to have the services of a specialist in economic, social and cultural rights. That request had been granted several years earlier, but, in view of the budgetary restrictions, the established post had not been filled. Even though the scope of the right to development was not the same as the scope of economic and social rights, they were all complementary and the assistance of a specialist would be of great value to the Committee. He reiterated to the High Commissioner the Committee's desire to have an office to work in during the sessions of the Committee.

6. Mr. AYALA LASSO (High Commissioner for Human Rights) said that he fully shared the Chairman's views; current difficulties certainly prevented Committee members from working as dynamically as they might wish. He would

like to make several experts available to them, but restrictions were such that, for the time being, that was impossible. He hoped that it would be possible to meet their request in the future.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Spain (E/1994/104/Add.5; HRI/CORE/1/Add.2/Rev.2; E/C.12/1995/LQ.2/Rev.1; M/HR/95/169)

7. At the invitation of the Chairperson, the members of the Spanish delegation took places at the Committee table.

8. Mr. NUÑEZ (Spain) said that, since Spain's submission to the Committee of its second periodic report, much progress had been made in the promotion and protection of economic, social and cultural rights. The Spanish Constitution called for equality before the law without discrimination of any kind as to birth, race, sex, religion, opinion or any other personal or social situation or circumstance and set forth the duty to promote conditions conducive to the exercise of freedom and the establishment of equality of individuals and groups. Various initiatives had been taken by the Spanish Government to that end.

9. With regard to the promotion of equality between men and women, for example, the new 1995 Workers' Statute Act embodied the principle of equal remuneration for work of equal value, which was a step forward in action to combat wage discrimination. As to the protection of mothers, the 1995 Act on the prevention of industrial accidents called for occupational safety and health measures for pregnant women, new mothers and nursing mothers. Act No. 42/1994 on fiscal and administrative measures and social protection made a distinction between maternity leave, which was paid at a rate of 100 per cent and the former temporary disability leave. The Workers' Statute Act extended parental leave to three years without pay, during which time the parent concerned could return to his or her job. It further declared null and void any dismissal owing to one of the causes of discrimination which were prohibited under the Constitution or the law or which violated fundamental rights and freedoms. Lastly, the new Criminal Code of 23 November 1995 defined sexual harassment and violence within the family as offences.

10. Turning to the protection of the economic and social rights of foreigners in Spain, he listed the numerous steps taken by his country with the adoption on 2 December 1994 of a Plan for the Social Integration of Immigrants. In addition, under the new Criminal Code, racist or xenophobic motives were now considered as aggravating circumstances, while trafficking in foreign labour was also an offence. The new implementing Regulation of Organization Act No. 7/85 facilitated the issuance of residence permits to foreigners for a longer period of time, as well as family reunification, and updated and simplified the administrative provisions on immigration. There was a new permanent residence and work permit issued to foreigners who could prove they had resided in Spain for at least five or six years.

11. The imposition of harsher penalties for undocumented labour marked a step forward in action to combat the illegal use of foreign labour. The creation, which had been decided in 1995, of an advisory body on the social integration of immigrants in which the Spanish Government and immigrants would be represented through their associations and non-governmental organizations (NGOs) was another important step.

12. At the administrative level, the establishment of a quota system to rationalize migratory flows into Spain should be cited, enabling immigrants to be legalized. It would permit some 38,000 immigrants to regularize their situation. Another step forward was the creation of an information, guidance and legal aid network for immigrants.

13. Cooperation with employers allowed the Government to monitor the labour, housing, education and health conditions of seasonal workers. He drew attention to the housing renewal, relocation and preventive health programmes for immigrant-occupied housing, particularly when housing was a part of remuneration, as was the case for seasonal farm workers.

14. As to culture, the Spanish Constitution granted ample competence to both the State and the Autonomous Communities. The State had exclusive competence in the area of intellectual property and protection of the national heritage. Cultural action was organized around four major axes: analysis and diagnosis of contemporary Spanish culture; cooperation among cultural institutions; taking the economic dimension of culture into account; and developing a human factor (training creators and protecting the economic and ethical rights deriving from intellectual property). A "map" of cultural needs had been prepared, which was intended to help improve cultural infrastructure during the coming 10 years and to ensure cultural decentralization. Various joint commissions of representatives of the Ministry of Culture and the Autonomous Communities were encouraging inter-institutional cooperation. The role of civil society in cultural life had been strengthened by the adoption of the so-called patronage law. As regarded the role of culture in the economy and development, the Ministry of Culture had just published two studies, entitled, "Culture in figures" and "Culture and development". In the field of intellectual property, a royal decree approving the revised text of the law on intellectual property had been issued on 22 April. Spain had just begun in-depth consideration of the cultural, technical, legal and ethical implications of the "information super-highway".

15. Turning to issues of employment, he said that the situation in Spain was characterized at present by a low activity rate, the end of migratory flows, the transformation of the structure of production and a relatively late "baby boom", compared to the rest of Europe. It was in that context that the two major labour-related reforms should be placed, one in 1984, to allow for easier access to the labour market, and the other in 1994, to improve labour relations (job mobility, collective bargaining). In addition to the policy of relaxing the conditions of employment, steps had been taken to encourage job creation, improve the effectiveness of recruitment and placement agencies and strengthen vocational training of both the unemployed and the employed. The unemployment rate was still very high and action to combat unemployment was therefore a priority, as much for the Spanish Government as for all the Governments of the European Union. The measures taken over the past few years were nevertheless a step in the right direction. For example, the female activity rate had risen from 25 to 35 per cent of the total.

16. Regarding conditions of work (art. 7 of the Covenant), the basic norms were still contained in the Workers' Statute Act, which had been substantially revised in 1994. The revision favoured the development of collective bargaining and the introduction of some flexibility in labour relations. In the spirit of article 8 of the Covenant, the 1978 Spanish Constitution assigned a major role to trade unions and employers' organizations. The constitutional principles had been specifically stated in Organization Act No. 11/1985 of 2 August 1985 on trade union freedoms, Act No. 19/1977 of 1 April 1977 on the regulation of trade union freedom of association and Royal Decree No. 17/1977 of 4 March 1977 on labour relations, which regulated the right to strike. Quite recently, on 8 January 1996, an important Act on the transfer of trade union property had been adopted.

17. The Spanish social security system continued to change and be modernized. Act No. 26/1990 had given needy persons the right to a non-contributory retirement and disability pension and had extended eligibility for family allowances. It should be pointed out that, since 1986 - that was to say, in nine years - social security expenditures had risen by 172 per cent and currently accounted for almost 10 per cent of gross domestic product (GDP). On 6 April 1995, Parliament had adopted the Toledo Agreement on the future of the welfare State and on social protection in Spain. To understand the importance of that issue, it should be recalled that the number of retirees had increased by 25.8 per cent between 1986 and 1995.

18. Concerning the right to health, he was sorry that it had not been possible to get the relevant report to the Committee on time. To make up for that, he wished to discuss four sets of measures that had been adopted on health since the submission of the second periodic report. They related to the extension of State medical coverage to 98.5 per cent of the population (including, in particular, coverage by the national health system for persons without resources who had not previously been recipients of social security); the incorporation of all State medical services into a national system (based on a comprehensive concept of promotion, prevention and rehabilitation aimed at setting up a vast network of health centres throughout the country); a substantial decentralization of the national health system for the benefit of the Autonomous Communities; and the redefinition of the benefits allowed by the national health system, several of which were new. National health policy was defined in the 1986 General Health Act, by which, among other things, the Spanish Government adopted the primary health-care objectives of the World Health Organization and its Health-for-All programme. That Act prescribed the right of all citizens and all foreigners residing in Spain to benefit from the Spanish health system. Furthermore, the emphasis was placed on preventive medicine and health education. Infant mortality continued to decline, dropping by 20.2 per cent between 1985 and 1992. The health-related laws adopted since 1985 included the 1990 Medicaments Act, the 1995 Act on the prevention of industrial accidents and a royal decree recognizing the right freely to choose a general practitioner and medical specialists.

19. With regard to education, the Spanish education system had undergone far-reaching changes in recent years. The number of students had increased dramatically and, owing to decentralization, the education system was currently very diverse and differentiated. A few statistics would suffice to show how much the sector had changed. Public expenditures on education in 1994 had accounted for 9.24 per cent of the State budget, as opposed to

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8.16 per cent in 1985. In 1993-1994, 52.7 per cent of three-year-old children had been in school, as compared with 16.5 per cent in 1985-1986. Between 1985 and 1995, the number of students at university had almost doubled and the Government had made an enormous effort to provide scholarships. The Spanish Constitution recognized the right to education for all under equal conditions and, accordingly, the Government was taking the necessary corrective measures to guarantee the principle of equality of opportunity. In that connection, he referred to Organization Act No. 8/85 of 3 July 1985 establishing regulations concerning the right to education (designated by the acronym LODE), as well as Organization Act No. 1/90 of 3 October 1990 on the general organization of the education system (LOGSE). Among other things, that Act expanded opportunities for children's schooling, extended the period of compulsory schooling to 16 years and made important changes in the field of specialized education.

20. Royal Decree No. 696/95 of 28 April 1995, concerning the education of students with special educational needs, reaffirmed the principles of schooling and called for extending the schooling of disabled children, the allocation of 3 per cent of university places to disabled students, special measures for gifted children and new vocational training for the disabled. Royal Decree No. 229/96 of 28 February 1996, on action to compensate for inequalities in the field of education, was also an important step forward. It called for measures to compensate for the disadvantages from which particular groups might suffer. Gypsies, immigrants and the children of itinerant and seasonal workers, as well as all those who could not attend school regularly for health reasons. The Decree also called for instruction in the language and culture of the country of origin and the host country. Organization Act No. 9/95, on participation in and the evaluation and management of educational centres, had been promulgated on 20 November 1995. The development of the education system was, of course, based on socio-cultural diversity, which, to a large extent, came from the many immigrants and asylum-seekers in Spain. The authorities were, naturally, particularly attentive to preventing and solving the problems of exclusion and xenophobia and the schooling difficulties from which persons in difficult economic, family and cultural circumstances were the first to suffer. That having been said, socio-cultural plurality was also a source of diversity for schools.

21. With regard to the right to religious freedom, the Spanish Parliament in 1992 had adopted acts endorsing the conclusion of cooperation agreements between the State and the evangelical, Jewish and Islamic religious authorities of Spain. The Spanish Government recognized religious freedom as both an individual and a collective right.

22. He hoped that he had covered the most important steps taken in Spain since the preparation of the third periodic report. He was, of course, at the Committee's disposal for further information.

23. Mr. Grissa took the Chair.

24. The CHAIRPERSON thanked the representative of Spain for his comprehensive presentation and invited Committee members to comment or ask questions on the general presentation of the third periodic report.

25. Mr. ALVAREZ VITA thanked the representative of Spain and praised the number and quality of members of the Spanish delegation. He wished to know why the part of the report concerning the right to health had not reached the members of the Committee.

26. Mr. NUÑEZ (Spain) said that that part of the report had simply not been ready in time. If the Committee members so wished, he would send it to them shortly.

27. Mr. TIKHONOV (Secretary of the Committee) said that the replies of the Spanish Government to the Committee's written question were contained in two separate documents and that they started with issue No. I.2. Those replies, which had been transmitted to the Committee, had been translated into English.

28. Mr. TEXIER thanked the delegation for the abundant information it had provided and welcomed the fact that it was composed of more technical experts than diplomats.

29. Mr. Alston resumed the Chair.

30. Mr. NUÑEZ (Spain) said that the Spanish Government had already replied in detail to the list of issues (E/C.12/1995/LQ.2/Rev.1) relating to articles 6, 7, 8 and 9 of the Covenant in the reports it had sent to the International Labour Organization (ILO) on the implementation of several ILO Conventions. He was prepared to give the Committee more technical information during the present meeting or on the next day.

31. Mr. TEXIER said that, according to the Committee's guidelines, if a country under consideration had communicated information of interest to the Committee to another organization - in the present case, the ILO - it could refer to that fact. However, having reported to another organization did not exempt the country whose report was under consideration from replying to the Committee's question.

32. The CHAIRPERSON said that he agreed with Mr. Texier and proposed that the Committee members and the delegation should leave aside the questions relating to articles 6 and 9 and return to them the following morning. He invited the delegation to reply to the issues relating to the first five articles of the Covenant (E/C.12/1995/LQ.2/Rev.1).

33. Mr. NUÑEZ (Spain) read out the written reply of the Spanish Government to issue No. I.2 (M/HR/95/169), adding that, in recent years, the Government had taken steps to ensure that all foreigners enjoyed the same economic, social and cultural rights as Spanish citizens. The political will of the Government and the legislature was that non-Spaniards should fully enjoy the rights recognized by the Covenant, to which Spain had been a party since 1977. It was a matter of protecting foreigners residing in Spain, sometimes under difficult circumstances, from all discrimination and guaranteeing them access to education, among other things. Spain practised a policy of assimilation and integration of foreigners within an inter-cultural framework.

34. Mr. APARICIO (Spain) said that the new implementing regulations of the Organization Act on the rights and freedoms of foreigners residing in Spain

had entered into force on 23 February 1996. Any foreigner living in Spain for at least five or six years had the right to obtain a residence permit and a work permit. The required administrative procedures had been simplified.

35. The CHAIRPERSON suggested that, to save time, the delegation should provide orally only information that supplemented the written replies.

36. Mr. NUÑEZ (Spain), referring to the international assistance and cooperation provided by Spain, said that the Spanish cooperation for development policy gave priority to Hispanic countries, the Philippines, North Africa and the Middle East and to various fields: the development of democratic institutions, education, human resources development, the elimination of poverty, the advancement of women, the protection of minorities, health and the environment, culture, modernization of the means of production and infrastructures, and scientific research. Spain was trying to meet the target set by the Organization for Economic Cooperation and Development (OECD) and the United Nations, namely, that 0.7 per cent of the GDP of developed countries should be allocated to development assistance by the year 2000.

37. The 1995 budget of the Spanish agency for international cooperation was broken down in the following way: 50 per cent for Latin America; 33 per cent for the rest of the world; 6 per cent for humanitarian assistance; 3 per cent for programmes carried out jointly with other organizations; and 8 per cent for general expenses. In 1994 and 1995, Spanish cooperation for development had increased greatly and civil society was more and more aware of the need to help developing countries. The next national budget for international cooperation called for a substantial increase in non-reimbursable resources. In 1995, Spanish public assistance had amounted to more than 227 billion pesetas and was set to increase still further.

38. The CHAIRPERSON invited the members of the Committee to request additional information on the replies given to the issues relating to the first five articles of the Covenant (arts. 1 to 5).

39. Mr. MARCHAN ROMERO asked what the legal status of foreigners was prior to their obtaining the residence permit. Were they at that point illegal? If so, what fundamental rights were they entitled to? Regarding the trade union rights of foreigners, he asked whether they had the right to form foreign trade unions.

40. Mr. TEXIER said that he would like more information on the publicity given to the third periodic report of Spain in civil society. Was the report the subject of a public debate? In his country, Government reports remained confidential. Like Mr. Marchán Romero, he wondered what the legal situation of foreigners was before they were regularized. The situation in his own country was from that standpoint disastrous. The European Union seemed to be closing itself off to foreigners and changes in refugee status there were a matter of concern. The number of asylum-seekers who actually obtained refugee status was declining, under the influence of the Schengen Agreement. Where did Spain stand on those issues? Did asylum-seekers obtain a work permit right away? Did the issuance of that permit depend on obtaining refugee status?

41. Mr. CEAUSU thanked the Spanish delegation for the quality of its written replies and the additional information provided orally to the Committee. However, in the report of Spain there was a contradiction between paragraph 19 - which dealt with the implementation of article 2 and stated that, in some cases, the Constitution appeared to restrict the enjoyment of a right to Spanish nationals (arts. 35.1, 41 and 47) - and the written reply of Spain, according to which non-Spaniards enjoyed exactly the same social rights as Spaniards, such that it could be stated that Spanish legislation was consistent with the Covenant.

42. He noted with satisfaction that the third periodic report provided substantial information on certain categories of immigrants, such as migrant workers, asylum-seekers and refugees. He wondered whether the residence permit automatically entitled foreigners to enjoy economic and social rights, particularly the right to work and the social security advantages deriving therefrom.

43. Mr. RATTRAY thanked the Spanish delegation for the quality and exhaustiveness of its report. None the less, action to combat racial discrimination called not only for legislative and constitutional provisions, but also for concrete action on the cultural environment, which influenced racist behaviours. He had learned with concern of a report which had been submitted to the Foreign Relations Committee of the United States Senate in February 1994 and which referred to ill-treatment by the Spanish police of North Africans, particularly Moroccans, and Africans. A 1992 report had denounced the openly xenophobic and racist attitudes of a number of law enforcement officers towards foreigners, especially at airports and other points of entry. He asked the delegation to comment on those reports. He also asked whether any legal proceedings had been instituted and whether those responsible had been punished.

44. The CHAIRPERSON, with the agreement of the Spanish delegation, invited the members of the Committee to ask the delegation about issues relating to the implementation of article 6 of the Covenant.

45. Mr. CEAUSU said that, according to paragraph 45 of the report, several programmes had been set up for women. It would be useful to know how the programmes and projects called for under those programmes, particularly the NOW/INEM plan for the training and employment of women, were carried out. It would also be useful to know which authority was in charge of implementing the plan, how it was financed, what was required of its beneficiaries, what the scope and geographical distribution of its services were and how many beneficiaries it had.

46. With regard to persons with disabilities, he asked how many people had benefited from measures to promote their employment in accordance with Act No. 23/1988 and Royal Decree No. 1451/1983, cited in paragraphs 56 and 59 of the report. How many Special Employment Centres and Occupational Centres had been established in Spain for the disabled, in accordance with Act No. 13/1982, and how many people had benefited from the services of those centres? According to paragraph 73, the remuneration received by women was nearly 20 per cent lower than that of men for equal work of equal value. It would be interesting to know whether that wage gap existed from the start of

the career, when men and women had equal qualifications. If that were the case, it would have to be concluded that the principle of equal pay between men and women was not respected in Spain.

47. Mr. GRISSA said that Spain's entry into the European Union had resulted in far-reaching changes, including rural exodus and the growing numbers of wage earners, which had not necessarily favoured the employment of women in urban areas. The unemployment rate in Spain was abnormally high, despite the country's strong economic growth and he wondered whether the training, recycling and information provided to job seekers were suited to the new forms of economic development, currently in the midst of restructuring, and to actual job opportunities.

48. Mr. TEXIER asked what type of unemployment insurance was envisaged and what the length of unemployment benefits was. Was there a minimum wage; what percentage of the total population was so-called "marginal"; and what assistance was available for that population?

49. Mr. AHMED thanked the Spanish delegation for the quality of its report. Like Mr. Ceausu, he had noted with concern that Spanish women generally earned 20 per cent less than men for work of equal value. According to the core document (HRI/CORE/1/Add.2/Rev.2), out of a total of 283,600 single-parent families, 242,000 were headed by women and 41,600 by men. The delegation should explain the reasons for that situation. As to employment, was it causing the influx of women into the labour market and, consequently, their comparative under-remuneration? He asked whether divorce and concubinage were responsible for the high proportion of households headed by women.

50. Mr. CEAUSU said it was not surprising that most single-parent families were headed by women.

51. The CHAIRPERSON invited the members of the Committee to ask the delegation questions about the information relating to the implementation of article 10.

52. Mr. MARCHAN ROMERO said that Spain had indicated in a report to the Human Rights Committee that the Spanish Constitution recognized forms of union other than marriage. However, it had also indicated in that report that no article of the 1994 Constitution recognized the non-matrimonial union of a man and a woman. Had the situation changed in that regard? He asked for information on the legal status of children born out of wedlock. Did they have the same rights as those born in wedlock?

53. Mr. GRISSA said that, according to paragraph 92 of the report, abandoned children were protected by the State. Was that protection provided directly by the State, or indirectly through private institutions? Up to what age was that protection guaranteed?

The meeting rose at 1 p.m.